

Senate Engrossed House Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

CHAPTER 159

HOUSE BILL 2483

AN ACT

AMENDING TITLE 41, CHAPTER 16, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 3.1; AMENDING SECTION 42-2003, ARIZONA REVISED STATUTES; PROVIDING FOR THE CONDITIONAL REPEAL OF SECTIONS 41-2170, 41-2170.01, 41-2170.02, 41-2170.03, 41-2170.04, 41-2170.05, 41-2170.06 AND 41-2170.07, ARIZONA REVISED STATUTES; RELATING TO THE REGULATION OF CIGARETTE MATERIALS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 41, chapter 16, Arizona Revised Statutes, is amended
3 by adding article 3.1, to read:

4 ARTICLE 3.1. REDUCED CIGARETTE IGNITION PROPENSITY

5 41-2170. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "AGENT" MEANS A PERSON WHO IS AUTHORIZED BY THE DEPARTMENT OF
8 REVENUE TO PURCHASE AND AFFIX STAMPS ON PACKAGES OF CIGARETTES.

9 2. "CIGARETTE" MEANS ANY ROLL OF TOBACCO OR ANY SUBSTITUTE FOR TOBACCO
10 WRAPPED IN PAPER OR ANY SUBSTANCE NOT CONTAINING TOBACCO.

11 3. "MANUFACTURER" MEANS:

12 (a) AN ENTITY THAT MANUFACTURES OR OTHERWISE PRODUCES CIGARETTES OR
13 CAUSES CIGARETTES TO BE MANUFACTURED OR PRODUCED ANYWHERE AND THAT THE
14 MANUFACTURER INTENDS TO BE SOLD IN THIS STATE, INCLUDING CIGARETTES THAT ARE
15 INTENDED TO BE SOLD IN THE UNITED STATES THROUGH AN IMPORTER.

16 (b) THE FIRST PURCHASER ANYWHERE THAT INTENDS TO RESELL IN THE UNITED
17 STATES CIGARETTES THAT ARE MANUFACTURED ANYWHERE AND THAT THE ORIGINAL
18 MANUFACTURER OR MAKER DOES NOT INTEND TO BE SOLD IN THE UNITED STATES.

19 (c) A SUCCESSOR ENTITY TO AN ENTITY DESCRIBED IN SUBDIVISION (a) OR
20 (b) OF THIS PARAGRAPH.

21 4. "QUALITY CONTROL AND QUALITY ASSURANCE PROGRAM" MEANS THE
22 LABORATORY PROCEDURES IMPLEMENTED TO ENSURE:

23 (a) THAT OPERATOR BIAS, SYSTEMATIC AND NONSYSTEMATIC METHODOLOGICAL
24 ERRORS AND EQUIPMENT-RELATED PROBLEMS DO NOT AFFECT THE RESULTS OF THE
25 TESTING.

26 (b) THAT THE TESTING REPEATABILITY REMAINS WITHIN THE REQUIRED
27 REPEATABILITY VALUES PRESCRIBED IN SECTION 41-2170.01, SUBSECTION B,
28 PARAGRAPH 6 FOR ALL TEST TRIALS THAT ARE USED TO CERTIFY CIGARETTES PURSUANT
29 TO THIS ARTICLE.

30 5. "REPEATABILITY" MEANS THE RANGE OF VALUES WITHIN WHICH THE REPEAT
31 RESULTS OF CIGARETTE TEST TRIALS FROM A SINGLE LABORATORY WILL FALL
32 NINETY-FIVE PER CENT OF THE TIME.

33 6. "RETAILER" MEANS ANY PERSON, OTHER THAN A MANUFACTURER OR
34 WHOLESALER, WHO IS ENGAGED IN SELLING CIGARETTES OR TOBACCO PRODUCTS.

35 7. "SALE" MEANS A TRANSFER OF TITLE OR POSSESSION, OR BOTH, OR AN
36 EXCHANGE OR BARTER, CONDITIONAL OR OTHERWISE, IN ANY MANNER OR BY ANY MEANS
37 WHATEVER OR ANY AGREEMENT TO TRANSFER, EXCHANGE OR BARTER. SALE INCLUDES THE
38 GIVING OF CIGARETTES AS SAMPLES, PRIZES OR GIFTS AND THE EXCHANGING OF
39 CIGARETTES FOR ANY CONSIDERATION OTHER THAN MONEY.

40 8. "SELL" MEANS TO SELL OR TO OFFER OR AGREE TO SELL.

41 9. "WHOLESALER" MEANS A PERSON, OTHER THAN A MANUFACTURER, WHO SELLS
42 CIGARETTES OR TOBACCO PRODUCTS TO RETAILERS OR OTHER PERSONS FOR RESALE, AND
43 ANY PERSON WHO OWNS, OPERATES OR MAINTAINS ONE OR MORE CIGARETTE OR TOBACCO
44 PRODUCT VENDING MACHINES IN, AT OR ON PREMISES OWNED OR OCCUPIED BY ANY OTHER
45 PERSON.

41-2170.01. Test method and performance standard: civil
penalty; reports

A. EXCEPT AS PROVIDED IN SUBSECTION I OF THIS SECTION, CIGARETTES MAY NOT BE SOLD OR OFFERED FOR SALE IN THIS STATE OR OFFERED FOR SALE OR SOLD TO PERSONS LOCATED IN THIS STATE UNLESS BOTH OF THE FOLLOWING OCCUR:

1. THE CIGARETTES ARE TESTED PURSUANT TO THE TEST METHOD PRESCRIBED IN THIS SECTION AND MEET THE PERFORMANCE STANDARD PRESCRIBED IN THIS SECTION.

2. THE MANUFACTURER FILES A WRITTEN CERTIFICATION WITH THE STATE FIRE MARSHAL PURSUANT TO SECTION 41-2170.02 AND MARKS THE CIGARETTES PURSUANT TO SECTION 41-2170.03.

B. THE TESTS PRESCRIBED IN SUBSECTION A, PARAGRAPH 1 OF THIS SECTION SHALL CONFORM TO THE FOLLOWING STANDARDS:

1. TESTING OF CIGARETTES SHALL BE CONDUCTED PURSUANT TO THE AMERICAN SOCIETY OF TESTING AND MATERIALS STANDARD E2187-04, "STANDARD TEST METHOD FOR MEASURING THE IGNITION STRENGTH OF CIGARETTES".

2. TESTING SHALL BE CONDUCTED ON TEN LAYERS OF FILTER PAPER.

3. NOT MORE THAN TWENTY-FIVE PER CENT OF THE CIGARETTES TESTED IN A TEST TRIAL PURSUANT TO THIS SECTION SHALL EXHIBIT FULL-LENGTH BURNS. FORTY REPLICATE TESTS COMPRISE A COMPLETE TEST TRIAL FOR EACH CIGARETTE TESTED.

4. THE PERFORMANCE STANDARD REQUIRED BY THIS SUBSECTION IS APPLIED ONLY TO A COMPLETE TEST TRIAL.

5. WRITTEN CERTIFICATIONS SHALL BE BASED ON TESTING CONDUCTED BY A LABORATORY THAT HAS BEEN ACCREDITED PURSUANT TO STANDARD ISO/IEC 17025 OF THE INTERNATIONAL ORGANIZATION FOR STANDARDIZATION OR OTHER COMPARABLE ACCREDITATION STANDARD REQUIRED BY THE STATE FIRE MARSHAL.

6. LABORATORIES CONDUCTING TESTING PURSUANT TO THIS SUBSECTION SHALL IMPLEMENT A QUALITY CONTROL AND QUALITY ASSURANCE PROGRAM THAT INCLUDES A PROCEDURE THAT WILL DETERMINE THE REPEATABILITY OF THE TESTING RESULTS. THE REPEATABILITY VALUE SHALL NOT BE GREATER THAN 0.19.

7. ADDITIONAL TESTING IS NOT REQUIRED IF CIGARETTES ARE TESTED CONSISTENT WITH THIS ARTICLE FOR ANY OTHER PURPOSE.

8. TESTING PERFORMED OR SPONSORED BY THE STATE FIRE MARSHAL TO DETERMINE A CIGARETTE'S COMPLIANCE WITH THE PERFORMANCE STANDARD REQUIRED BY THIS SUBSECTION SHALL BE CONDUCTED PURSUANT TO THIS SUBSECTION.

C. EACH CIGARETTE LISTED IN A CERTIFICATION SUBMITTED PURSUANT TO SECTION 41-2170.02 THAT USES LOWERED PERMEABILITY BANDS IN THE CIGARETTE PAPER TO ACHIEVE COMPLIANCE WITH THE PERFORMANCE STANDARD PRESCRIBED IN THIS SECTION SHALL HAVE AT LEAST TWO NOMINALLY IDENTICAL BANDS ON THE PAPER SURROUNDING THE TOBACCO COLUMN. AT LEAST ONE COMPLETE BAND SHALL BE LOCATED AT LEAST FIFTEEN MILLIMETERS FROM THE LIGHTING END OF THE CIGARETTE. FOR CIGARETTES ON WHICH THE BANDS ARE POSITIONED BY DESIGN, THERE SHALL BE AT LEAST TWO BANDS FULLY LOCATED AT LEAST FIFTEEN MILLIMETERS FROM THE LIGHTING END AND TEN MILLIMETERS FROM THE FILTER END OF THE TOBACCO COLUMN OR TEN MILLIMETERS FROM THE LABELED END OF THE TOBACCO COLUMN FOR NONFILTERED CIGARETTES.

1 D. A MANUFACTURER OF A CIGARETTE THAT THE STATE FIRE MARSHAL
2 DETERMINES CANNOT BE TESTED PURSUANT TO THE TEST METHOD PRESCRIBED IN
3 SUBSECTION B, PARAGRAPH 1 OF THIS SECTION SHALL PROPOSE A TEST METHOD AND
4 PERFORMANCE STANDARD FOR THE CIGARETTE TO THE STATE FIRE MARSHAL. ON
5 APPROVAL OF THE PROPOSED TEST METHOD AND A DETERMINATION BY THE STATE FIRE
6 MARSHAL THAT THE PERFORMANCE STANDARD PROPOSED BY THE MANUFACTURER IS
7 EQUIVALENT TO THE PERFORMANCE STANDARD PRESCRIBED IN SUBSECTION B, PARAGRAPH
8 3 OF THIS SECTION, THE MANUFACTURER MAY EMPLOY THAT TEST METHOD AND
9 PERFORMANCE STANDARD TO CERTIFY THE CIGARETTE PURSUANT TO SECTION 41-2170.02.
10 IF THE STATE FIRE MARSHAL DETERMINES THAT ANOTHER STATE HAS ENACTED REDUCED
11 CIGARETTE IGNITION PROPENSITY STANDARDS THAT INCLUDE A TEST METHOD AND
12 PERFORMANCE STANDARD THAT ARE THE SAME AS THOSE PRESCRIBED IN THIS ARTICLE,
13 AND THE STATE FIRE MARSHAL FINDS THAT THE OFFICIALS RESPONSIBLE FOR
14 IMPLEMENTING THOSE REQUIREMENTS HAVE APPROVED THE PROPOSED ALTERNATIVE TEST
15 METHOD AND PERFORMANCE STANDARD FOR A PARTICULAR CIGARETTE PROPOSED BY A
16 MANUFACTURER AS MEETING THE FIRE SAFETY STANDARDS OF THAT STATE'S LAW OR
17 REGULATION UNDER A LEGAL PROVISION COMPARABLE TO THIS SECTION, THE STATE FIRE
18 MARSHAL SHALL AUTHORIZE THAT MANUFACTURER TO EMPLOY THE ALTERNATIVE TEST
19 METHOD AND PERFORMANCE STANDARD TO CERTIFY THAT CIGARETTE FOR SALE IN THIS
20 STATE, UNLESS THE STATE FIRE MARSHAL DEMONSTRATES A REASONABLE BASIS WHY THE
21 ALTERNATIVE TEST SHOULD NOT BE ACCEPTED PURSUANT TO THIS ARTICLE. ALL OTHER
22 APPLICABLE REQUIREMENTS OF THIS SECTION APPLY TO THE MANUFACTURER.

23 E. EACH MANUFACTURER SHALL MAINTAIN COPIES OF THE REPORTS OF ALL TESTS
24 CONDUCTED ON ALL CIGARETTES OFFERED FOR SALE FOR THREE YEARS AND SHALL MAKE
25 COPIES OF THESE REPORTS AVAILABLE TO THE STATE FIRE MARSHAL AND THE ATTORNEY
26 GENERAL ON WRITTEN REQUEST. ANY MANUFACTURER WHO FAILS TO MAKE COPIES OF
27 THESE REPORTS AVAILABLE WITHIN SIXTY DAYS AFTER RECEIVING A WRITTEN REQUEST
28 IS SUBJECT TO A CIVIL PENALTY OF NOT TO EXCEED TEN THOUSAND DOLLARS FOR EACH
29 DAY AFTER THE SIXTIETH DAY THAT THE MANUFACTURER DOES NOT MAKE THE COPIES
30 AVAILABLE.

31 F. THE STATE FIRE MARSHAL MAY ADOPT A SUBSEQUENT AMERICAN SOCIETY OF
32 TESTING AND MATERIALS STANDARD TEST METHOD FOR MEASURING THE IGNITION
33 STRENGTH OF CIGARETTES ON A FINDING THAT THE SUBSEQUENT METHOD DOES NOT
34 RESULT IN A CHANGE IN THE PERCENTAGE OF FULL-LENGTH BURNS EXHIBITED BY ANY
35 TESTED CIGARETTE IF COMPARED TO THE PERCENTAGE OF FULL-LENGTH BURNS THE SAME
36 CIGARETTE WOULD EXHIBIT IF IT WERE TESTED PURSUANT TO THE AMERICAN SOCIETY OF
37 TESTING AND MATERIALS STANDARD E2187-04 AND THE PERFORMANCE STANDARD
38 PRESCRIBED IN SUBSECTION B, PARAGRAPH 3 OF THIS SECTION.

39 G. THE STATE FIRE MARSHAL SHALL REVIEW THE EFFECTIVENESS OF THIS
40 SECTION AND REPORT EVERY THREE YEARS TO THE LEGISLATURE ON THE STATE FIRE
41 MARSHAL'S FINDINGS AND ANY RECOMMENDATIONS FOR LEGISLATION TO IMPROVE THE
42 EFFECTIVENESS OF THIS SECTION. THE STATE FIRE MARSHAL SHALL SUBMIT THE
43 REPORT AND LEGISLATIVE RECOMMENDATIONS ON OR BEFORE JULY 1 OF EACH THREE-YEAR
44 PERIOD.

1 H. THE STATE FIRE MARSHAL SHALL NOTIFY THE GOVERNOR, THE SPEAKER OF
2 THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE IN WRITING
3 IMMEDIATELY AFTER A FEDERAL REDUCED CIGARETTE IGNITION PROPENSITY STANDARD
4 THAT PREEMPTS THE STANDARD PRESCRIBED IN THIS ARTICLE BECOMES EFFECTIVE.

5 I. THIS SECTION DOES NOT PROHIBIT EITHER OF THE FOLLOWING:

6 1. WHOLESALERS OR RETAILERS FROM SELLING THEIR EXISTING INVENTORY OF
7 CIGARETTES ON OR AFTER AUGUST 1, 2009 IF THE WHOLESALER OR RETAILER CAN
8 ESTABLISH THAT STATE TAX STAMPS WERE AFFIXED TO THE CIGARETTES BEFORE AUGUST
9 1, 2009 AND THE WHOLESALER OR RETAILER CAN ESTABLISH THAT THE INVENTORY WAS
10 PURCHASED BEFORE AUGUST 1, 2009 IN COMPARABLE QUANTITY TO THE INVENTORY
11 PURCHASED DURING THE SAME PERIOD OF THE PRIOR YEAR.

12 2. THE SALE OF CIGARETTES SOLELY FOR THE PURPOSE OF CONSUMER TESTING.
13 FOR THE PURPOSES OF THIS PARAGRAPH, "CONSUMER TESTING" MEANS AN ASSESSMENT OF
14 CIGARETTES THAT IS CONDUCTED BY A MANUFACTURER, OR UNDER THE CONTROL AND
15 DIRECTION OF A MANUFACTURER, FOR THE PURPOSE OF EVALUATING CONSUMER
16 ACCEPTANCE OF THE CIGARETTES, USING ONLY THE QUANTITY OF CIGARETTES THAT IS
17 REASONABLY NECESSARY FOR SUCH AN ASSESSMENT.

18 J. THIS SECTION APPLIES BEGINNING AUGUST 1, 2009.

19 41-2170.02. Certification; product change; fee

20 A. EACH MANUFACTURER SHALL SUBMIT TO THE STATE FIRE MARSHAL A WRITTEN
21 CERTIFICATION ATTESTING THAT EACH CIGARETTE LISTED IN THE CERTIFICATION:

22 1. HAS BEEN TESTED PURSUANT TO SECTION 41-2170.01.

23 2. MEETS THE PERFORMANCE STANDARDS PRESCRIBED IN SECTION 41-2170.01.

24 B. THE MANUFACTURER SHALL DESCRIBE EACH CIGARETTE LISTED IN THE
25 CERTIFICATION WITH THE FOLLOWING INFORMATION:

26 1. BRAND OR TRADE NAME ON THE PACKAGE.

27 2. STYLE, SUCH AS LIGHT OR ULTRA LIGHT.

28 3. LENGTH IN MILLIMETERS.

29 4. CIRCUMFERENCE IN MILLIMETERS.

30 5. FLAVOR, SUCH AS MENTHOL OR CHOCOLATE, IF APPLICABLE.

31 6. FILTER OR NONFILTER.

32 7. PACKAGE DESCRIPTION, SUCH AS SOFT PACK OR BOX.

33 8. MARKING APPROVED PURSUANT TO SECTION 41-2170.03.

34 9. NAME, ADDRESS AND TELEPHONE NUMBER OF THE LABORATORY, IF DIFFERENT
35 THAN THE MANUFACTURER THAT CONDUCTED THE TEST.

36 10. DATE THAT THE TESTING OCCURRED.

37 C. A MANUFACTURER SHALL RECERTIFY EACH CIGARETTE CERTIFIED UNDER THIS
38 SECTION EVERY THREE YEARS.

39 D. A MANUFACTURER SHALL MAKE THE CERTIFICATIONS AVAILABLE TO THE
40 ATTORNEY GENERAL FOR PURPOSES CONSISTENT WITH THIS ARTICLE AND THE DEPARTMENT
41 OF REVENUE FOR THE PURPOSES OF ENSURING COMPLIANCE WITH THIS SECTION.

42 E. IF A MANUFACTURER HAS CERTIFIED A CIGARETTE PURSUANT TO THIS
43 SECTION AND AFTER CERTIFICATION MAKES ANY CHANGE TO THE CIGARETTE THAT IS
44 LIKELY TO ALTER ITS COMPLIANCE WITH THE REDUCED CIGARETTE IGNITION PROPENSITY
45 STANDARDS PRESCRIBED BY THIS ARTICLE, THAT CIGARETTE SHALL NOT BE SOLD OR

1 OFFERED FOR SALE IN THIS STATE UNTIL THE MANUFACTURER RETESTS THE CIGARETTE
2 PURSUANT TO THE TESTING STANDARDS PRESCRIBED IN SECTION 41-2170.01 AND
3 MAINTAINS RECORDS OF THAT RETESTING AS REQUIRED BY SECTION 41-2170.01. ANY
4 ALTERED CIGARETTE THAT DOES NOT MEET THE PERFORMANCE STANDARD PRESCRIBED IN
5 SECTION 41-2170.01 MAY NOT BE SOLD IN THIS STATE.

6 F. THE STATE FIRE MARSHAL MAY ADOPT RULES REQUIRING EACH MANUFACTURER
7 TO PAY TO THE STATE FIRE MARSHAL A FEE OF TWO HUNDRED FIFTY DOLLARS PER BRAND
8 FAMILY OF CIGARETTES CERTIFIED IN COMPLIANCE WITH THIS SECTION. THE FEE
9 APPLIES TO ALL CIGARETTES WITHIN THE BRAND FAMILY CERTIFIED AND INCLUDES ANY
10 NEW CIGARETTE BRAND STYLE WITHIN THE BRAND FAMILY DURING THE THREE-YEAR
11 CERTIFICATION PERIOD.

12 G. THIS SECTION APPLIES BEGINNING AUGUST 1, 2009.

13 41-2170.03. Markings; requirements; fire marshal approval

14 A. A MANUFACTURER SHALL MARK CIGARETTES THAT ARE CERTIFIED PURSUANT TO
15 SECTION 41-2170.02 TO INDICATE COMPLIANCE WITH SECTION 41-2170.01. THE
16 MARKING SHALL BE IN AT LEAST EIGHT POINT TYPE AND SHALL CONSIST OF EITHER:

17 1. MODIFICATION OF THE PRODUCT UPC CODE TO INCLUDE A VISIBLE MARK
18 PRINTED AT OR AROUND THE AREA OF THE UPC CODE. THE MARK MAY CONSIST OF
19 ALPHANUMERIC OR SYMBOLIC CHARACTERS PERMANENTLY STAMPED, ENGRAVED, EMBOSSED
20 OR PRINTED IN CONJUNCTION WITH THE UPC CODE.

21 2. ANY VISIBLE COMBINATION OF ALPHANUMERIC OR SYMBOLIC CHARACTERS
22 PERMANENTLY STAMPED, ENGRAVED OR EMBOSSED ON THE CIGARETTE PACKAGE OR
23 CELLOPHANE WRAP.

24 3. PRINTED, STAMPED, ENGRAVED OR EMBOSSED TEXT THAT INDICATES THAT THE
25 CIGARETTES MEET THE STANDARDS OF THIS SECTION.

26 B. A MANUFACTURER SHALL USE ONLY ONE MARKING AND SHALL APPLY THIS
27 MARKING UNIFORMLY FOR ALL PACKAGES, INCLUDING PACKS, CARTONS AND CASES, AND
28 BRANDS MARKETED BY THAT MANUFACTURER.

29 C. BEFORE THE CERTIFICATION OF ANY CIGARETTE, A MANUFACTURER SHALL
30 PRESENT ITS PROPOSED MARKING TO THE STATE FIRE MARSHAL FOR APPROVAL.
31 PROPOSED MARKINGS ARE DEEMED APPROVED IF THE STATE FIRE MARSHAL FAILS TO ACT
32 WITHIN TEN BUSINESS DAYS AFTER RECEIVING A REQUEST FOR APPROVAL. ON RECEIPT
33 OF THE REQUEST, THE STATE FIRE MARSHAL SHALL APPROVE OR DISAPPROVE THE
34 MARKING OFFERED, EXCEPT THAT THE STATE FIRE MARSHAL SHALL APPROVE EITHER OF
35 THE FOLLOWING:

36 1. ANY MARKING IN USE AND APPROVED FOR SALE IN NEW YORK STATE PURSUANT
37 TO THE NEW YORK FIRE SAFETY STANDARDS FOR CIGARETTES IN SECTION 156-c OF THE
38 NEW YORK EXECUTIVE LAW AND PART 429 OF TITLE 19 OF THE NEW YORK CODE OF RULES
39 AND REGULATIONS.

40 2. THE LETTERS "FSC", WHICH SIGNIFY FIRE STANDARDS COMPLIANT,
41 APPEARING IN EIGHT POINT TYPE OR LARGER AND PERMANENTLY PRINTED, STAMPED,
42 ENGRAVED OR EMBOSSED ON THE PACKAGE AT OR NEAR THE UPC CODE.

43 D. A MANUFACTURER SHALL NOT MODIFY ITS APPROVED MARKING UNLESS THE
44 MODIFICATION HAS BEEN APPROVED BY THE STATE FIRE MARSHAL PURSUANT TO THIS
45 SECTION.

1 E. MANUFACTURERS CERTIFYING CIGARETTES PURSUANT TO SECTION 41-2170.02
2 SHALL PROVIDE A COPY OF THE CERTIFICATIONS TO ALL WHOLESALERS AND AGENTS TO
3 WHOM THEY SELL CIGARETTES AND SHALL ALSO PROVIDE SUFFICIENT COPIES OF AN
4 ILLUSTRATION OF THE PACKAGE MARKING USED BY THE MANUFACTURER PURSUANT TO THIS
5 SECTION FOR EACH RETAILER TO WHOM THE WHOLESALERS OR AGENTS SELL CIGARETTES.
6 WHOLESALERS AND AGENTS SHALL PROVIDE A COPY OF THESE PACKAGE MARKINGS
7 RECEIVED FROM MANUFACTURERS TO ALL RETAILERS TO WHOM THEY SELL CIGARETTES.
8 WHOLESALERS, AGENTS AND RETAILERS SHALL PERMIT THE STATE FIRE MARSHAL, THE
9 DEPARTMENT OF REVENUE OR THE ATTORNEY GENERAL, OR THEIR EMPLOYEES, TO INSPECT
10 MARKINGS OF CIGARETTE PACKAGING MARKED PURSUANT TO THIS SECTION.

11 F. THIS SECTION APPLIES BEGINNING AUGUST 1, 2009.

12 41-2170.04. Civil penalties

13 A. A MANUFACTURER, WHOLESALER, AGENT OR OTHER PERSON OR ENTITY THAT
14 KNOWINGLY SELLS OR OFFERS TO SELL CIGARETTES, OTHER THAN THROUGH RETAIL SALE,
15 IN VIOLATION OF SECTION 41-2170.01 IS SUBJECT TO A CIVIL PENALTY OF NOT TO
16 EXCEED ONE HUNDRED DOLLARS FOR EACH PACK OF CIGARETTES SOLD OR OFFERED FOR
17 SALE. THIS PENALTY SHALL NOT EXCEED TWENTY-FIVE THOUSAND DOLLARS DURING ANY
18 THIRTY-DAY PERIOD.

19 B. A RETAILER WHO KNOWINGLY SELLS OR OFFERS TO SELL CIGARETTES IN
20 VIOLATION OF SECTION 41-2170.01 IS SUBJECT TO A CIVIL PENALTY OF NOT TO
21 EXCEED ONE HUNDRED DOLLARS FOR EACH PACK OF CIGARETTES SOLD OR OFFERED FOR
22 SALE. THIS PENALTY SHALL NOT EXCEED ONE THOUSAND DOLLARS DURING ANY
23 THIRTY-DAY PERIOD.

24 C. IN ADDITION TO ANY PENALTY PRESCRIBED BY LAW, ANY CORPORATION,
25 PARTNERSHIP, SOLE PROPRIETOR, LIMITED PARTNERSHIP OR ASSOCIATION THAT IS
26 ENGAGED IN THE MANUFACTURE OF CIGARETTES AND THAT KNOWINGLY MAKES A FALSE
27 CERTIFICATION PURSUANT TO SECTION 41-2170.02 IS SUBJECT TO A CIVIL PENALTY OF
28 AT LEAST TWENTY-FIVE THOUSAND DOLLARS BUT NOT MORE THAN ONE HUNDRED THOUSAND
29 DOLLARS FOR EACH FALSE CERTIFICATION.

30 D. A PERSON WHO VIOLATES ANY OTHER PROVISION OF THIS ARTICLE IS
31 SUBJECT TO A CIVIL PENALTY FOR A FIRST OFFENSE OF NOT TO EXCEED ONE THOUSAND
32 DOLLARS AND A CIVIL PENALTY OF NOT TO EXCEED FIVE THOUSAND DOLLARS FOR EACH
33 SUBSEQUENT VIOLATION.

34 E. ANY CIGARETTES THAT HAVE BEEN SOLD OR OFFERED FOR SALE AND THAT DO
35 NOT COMPLY WITH THE PERFORMANCE STANDARD PRESCRIBED BY SECTION 41-2170.01 ARE
36 SUBJECT TO FORFEITURE AND, ON FORFEITURE, SHALL BE DESTROYED. BEFORE THE
37 DESTRUCTION OF ANY FORFEITED CIGARETTE, THE TRUE HOLDER OF THE TRADEMARK
38 RIGHTS IN THE CIGARETTE BRAND MAY INSPECT THE CIGARETTE.

39 F. IN ADDITION TO ANY OTHER REMEDY PROVIDED BY LAW, THE STATE FIRE
40 MARSHAL OR THE ATTORNEY GENERAL MAY FILE AN ACTION IN THE SUPERIOR COURT FOR
41 INJUNCTIVE RELIEF OR TO RECOVER ANY COSTS OR DAMAGES SUFFERED BY THIS STATE
42 BECAUSE OF A VIOLATION OF THIS SECTION, INCLUDING ENFORCEMENT COSTS RELATING
43 TO THE SPECIFIC VIOLATION AND ATTORNEY FEES. EACH VIOLATION OF THIS SECTION
44 OR RULES ADOPTED PURSUANT TO THIS SECTION IS A SEPARATE CIVIL VIOLATION FOR
45 WHICH THE STATE FIRE MARSHAL OR ATTORNEY GENERAL MAY OBTAIN RELIEF.

1 G. IF A LAW ENFORCEMENT OFFICER OR DULY AUTHORIZED REPRESENTATIVE OF
2 THE STATE FIRE MARSHAL DISCOVERS CIGARETTES THAT HAVE NOT BEEN MARKED AS
3 REQUIRED BY SECTION 41-2170.03, THE OFFICER OR REPRESENTATIVE SHALL NOTIFY
4 THE DEPARTMENT OF REVENUE AND MAY SEIZE AND TAKE POSSESSION OF THE
5 CIGARETTES. THE CIGARETTES SHALL BE TURNED OVER TO THE DEPARTMENT OF REVENUE
6 AND SHALL BE FORFEITED TO THE STATE. CIGARETTES SEIZED PURSUANT TO THIS
7 SECTION SHALL BE DESTROYED. BEFORE THE DESTRUCTION OF ANY SEIZED CIGARETTE,
8 THE TRUE HOLDER OF THE TRADEMARK RIGHTS IN THE CIGARETTE BRAND MAY INSPECT
9 THE CIGARETTE.

10 H. THIS SECTION APPLIES BEGINNING AUGUST 1, 2009.

11 41-2170.05. Implementation; rule making; inspection of
12 cigarettes; definitions

13 A. THE STATE FIRE MARSHAL SHALL IMPLEMENT THIS ARTICLE PURSUANT TO THE
14 IMPLEMENTATION AND SUBSTANCE OF THE NEW YORK FIRE SAFETY STANDARDS FOR
15 CIGARETTES IN SECTION 156-c OF THE NEW YORK EXECUTIVE LAW AND PART 429 OF
16 TITLE 19 OF THE NEW YORK CODE OF RULES AND REGULATIONS.

17 B. THE STATE FIRE MARSHAL MAY ADOPT RULES TO ENFORCE THIS ARTICLE.

18 C. AS AUTHORIZED PURSUANT TO SECTION 42-3151, THE DEPARTMENT OF
19 REVENUE IN THE REGULAR COURSE OF CONDUCTING INSPECTIONS OF CIGARETTE
20 DISTRIBUTORS AND RETAILERS MAY INSPECT CIGARETTES TO DETERMINE IF THE
21 CIGARETTES ARE MARKED AS REQUIRED BY SECTION 41-2170.03. IF THE CIGARETTES
22 ARE NOT MARKED AS REQUIRED, THE DEPARTMENT OF REVENUE SHALL NOTIFY THE STATE
23 FIRE MARSHAL. FOR THE PURPOSE OF THIS SECTION, "CIGARETTE", "CIGARETTE
24 DISTRIBUTOR" AND "RETAILER" HAVE THE SAME MEANINGS PRESCRIBED IN SECTION
25 42-3001.

26 D. AN AGENT OF THE DEPARTMENT OF REVENUE WHO IS ALSO A LAW ENFORCEMENT
27 AGENT OR INVESTIGATOR MAY CONDUCT INSPECTIONS PURSUANT TO SECTION 41-2170.04,
28 SUBSECTION G.

29 E. THIS SECTION APPLIES BEGINNING AUGUST 1, 2009.

30 41-2170.06. Inspection

31 BEGINNING AUGUST 1, 2009, TO ENFORCE THIS ARTICLE, THE ATTORNEY GENERAL
32 AND THE STATE FIRE MARSHAL, OR THEIR EMPLOYEES, MAY EXAMINE THE BOOKS,
33 PAPERS, INVOICES AND OTHER RECORDS OF ANY PERSON IN POSSESSION, CONTROL OR
34 OCCUPANCY OF ANY PREMISES WHERE CIGARETTES ARE PLACED, STORED, SOLD OR
35 OFFERED FOR SALE, AS WELL AS THE STOCK OF CIGARETTES ON THE PREMISES. EACH
36 PERSON IN THE POSSESSION, CONTROL OR OCCUPANCY OF ANY PREMISES WHERE
37 CIGARETTES ARE PLACED, SOLD OR OFFERED FOR SALE SHALL ALLOW THE ATTORNEY
38 GENERAL AND THE STATE FIRE MARSHAL, OR THEIR EMPLOYEES, THE MEANS, FACILITIES
39 AND OPPORTUNITY FOR THE EXAMINATIONS AUTHORIZED BY THIS SECTION.

40 41-2170.07. Sale outside of state

41 BEGINNING AUGUST 1, 2009, THIS ARTICLE DOES NOT PROHIBIT ANY PERSON OR
42 ENTITY FROM MANUFACTURING OR SELLING CIGARETTES THAT DO NOT MEET THE
43 REQUIREMENTS OF SECTION 41-2170.01 IF THE CIGARETTES ARE OR WILL BE STAMPED
44 FOR SALE IN ANOTHER STATE OR ARE PACKAGED FOR SALE OUTSIDE OF THE UNITED

1 STATES AND THAT PERSON OR ENTITY HAS TAKEN REASONABLE STEPS TO ENSURE THAT
2 THE CIGARETTES WILL NOT BE SOLD OR OFFERED FOR SALE TO PERSONS IN THIS STATE.

3 41-2170.08. State preemption

4 THE LEGISLATURE FINDS THAT THE SAFETY STANDARDS PRESCRIBED IN THIS
5 ARTICLE ARE OF STATEWIDE CONCERN. THIS ARTICLE PREEMPTS REGULATION BY A
6 POLITICAL SUBDIVISION OF THIS STATE REGARDING THE CIGARETTE IGNITION
7 PROPENSITY SAFETY STANDARDS PRESCRIBED IN THIS ARTICLE.

8 Sec. 2. Section 42-2003, Arizona Revised Statutes, is amended to read:
9 42-2003. Authorized disclosure of confidential information

10 A. Confidential information relating to:

11 1. A taxpayer may be disclosed to the taxpayer, its successor in
12 interest or a designee of the taxpayer who is authorized in writing by the
13 taxpayer. A principal corporate officer of a parent corporation may execute
14 a written authorization for a controlled subsidiary.

15 2. A corporate taxpayer may be disclosed to any principal officer, any
16 person designated by a principal officer or any person designated in a
17 resolution by the corporate board of directors or other similar governing
18 body.

19 3. A partnership may be disclosed to any partner of the
20 partnership. This exception does not include disclosure of confidential
21 information of a particular partner unless otherwise authorized.

22 4. An estate may be disclosed to the personal representative of the
23 estate and to any heir, next of kin or beneficiary under the will of the
24 decedent if the department finds that the heir, next of kin or beneficiary
25 has a material interest which will be affected by the confidential
26 information.

27 5. A trust may be disclosed to the trustee or trustees, jointly or
28 separately, and to the grantor or any beneficiary of the trust if the
29 department finds that the grantor or beneficiary has a material interest
30 which will be affected by the confidential information.

31 6. Any taxpayer may be disclosed if the taxpayer has waived any rights
32 to confidentiality either in writing or on the record in any administrative
33 or judicial proceeding.

34 7. The name and taxpayer identification numbers of persons issued
35 direct payment permits may be publicly disclosed.

36 B. Confidential information may be disclosed to:

37 1. Any employee of the department whose official duties involve tax
38 administration.

39 2. The office of the attorney general solely for its use in
40 preparation for, or in an investigation which may result in, any proceeding
41 involving tax administration before the department or any other agency or
42 board of this state, or before any grand jury or any state or federal court.

43 3. The department of liquor licenses and control for its use in
44 determining whether a spirituous liquor licensee has paid all transaction
45 privilege taxes and affiliated excise taxes incurred as a result of the sale

1 of spirituous liquor, as defined in section 4-101, at the licensed
2 establishment and imposed on the licensed establishments by this state and
3 its political subdivisions.

4 4. Other state tax officials whose official duties require the
5 disclosure for proper tax administration purposes if the information is
6 sought in connection with an investigation or any other proceeding conducted
7 by the official. Any disclosure is limited to information of a taxpayer who
8 is being investigated or who is a party to a proceeding conducted by the
9 official.

10 5. The following agencies, officials and organizations, if they grant
11 substantially similar privileges to the department for the type of
12 information being sought, pursuant to statute and a written agreement between
13 the department and the foreign country, agency, state, Indian tribe or
14 organization:

15 (a) The United States internal revenue service, alcohol and tobacco
16 tax and trade bureau of the United States treasury, United States bureau of
17 alcohol, tobacco, firearms and explosives of the United States department of
18 justice, United States drug enforcement agency and federal bureau of
19 investigation.

20 (b) A state tax official of another state.

21 (c) An organization of states, federation of tax administrators or
22 multistate tax commission that operates an information exchange for tax
23 administration purposes.

24 (d) An agency, official or organization of a foreign country with
25 responsibilities that are comparable to those listed in subdivision (a), (b)
26 or (c) of this paragraph.

27 (e) An agency, official or organization of an Indian tribal government
28 with responsibilities comparable to the responsibilities of the agencies,
29 officials or organizations identified in subdivision (a), (b) or (c) of this
30 paragraph.

31 6. The auditor general, in connection with any audit of the department
32 subject to the restrictions in section 42-2002, subsection D.

33 7. Any person to the extent necessary for effective tax administration
34 in connection with:

35 (a) The processing, storage, transmission, destruction and
36 reproduction of the information.

37 (b) The programming, maintenance, repair, testing and procurement of
38 equipment for purposes of tax administration.

39 8. The office of administrative hearings relating to taxes
40 administered by the department pursuant to section 42-1101, but the
41 department shall not disclose any confidential information:

42 (a) Regarding income tax, withholding tax or estate tax.

43 (b) On any tax issue relating to information associated with the
44 reporting of income tax, withholding tax or estate tax.

1 9. The United States treasury inspector general for tax administration
2 for the purpose of reporting a violation of internal revenue code section
3 7213A (26 United States Code section 7213A), unauthorized inspection of
4 returns or return information.

5 10. The financial management service of the United States treasury
6 department for use in the treasury offset program.

7 11. The United States treasury department or its authorized agent for
8 use in the state income tax levy program and in the electronic federal tax
9 payment system.

10 12. The department of commerce for its use in:

11 (a) Qualifying motion picture production companies for the tax
12 incentives provided for motion picture production under chapter 5 of this
13 title and sections 43-1075 and 43-1163.

14 (b) Fulfilling its annual reporting responsibility pursuant to section
15 41-1517, ~~subsection~~ SUBSECTIONS S AND T.

16 (c) Qualifying applicants for the motion picture infrastructure
17 project tax credits under sections 43-1075.01 and 43-1163.01.

18 13. A prosecutor for purposes of section 32-1164, subsection C.

19 14. THE STATE FIRE MARSHAL FOR USE IN DETERMINING COMPLIANCE WITH AND
20 ENFORCING TITLE 41, CHAPTER 16, ARTICLE 3.1.

21 C. Confidential information may be disclosed in any state or federal
22 judicial or administrative proceeding pertaining to tax administration
23 pursuant to the following conditions:

24 1. One or more of the following circumstances must apply:

25 (a) The taxpayer is a party to the proceeding.

26 (b) The proceeding arose out of, or in connection with, determining
27 the taxpayer's civil or criminal liability, or the collection of the
28 taxpayer's civil liability, with respect to any tax imposed under this title
29 or title 43.

30 (c) The treatment of an item reflected on the taxpayer's return is
31 directly related to the resolution of an issue in the proceeding.

32 (d) Return information directly relates to a transactional
33 relationship between a person who is a party to the proceeding and the
34 taxpayer and directly affects the resolution of an issue in the proceeding.

35 2. Confidential information may not be disclosed under this subsection
36 if the disclosure is prohibited by section 42-2002, subsection C or D.

37 D. Identity information may be disclosed for purposes of notifying
38 persons entitled to tax refunds if the department is unable to locate the
39 persons after reasonable effort.

40 E. The department, upon the request of any person, shall provide the
41 names and addresses of bingo licensees as defined in section 5-401, verify
42 whether or not a person has a privilege license and number, a distributor's
43 license and number or a withholding license and number or disclose the
44 information to be posted on the department's web site or otherwise publicly

1 accessible pursuant to section 42-1124, subsection F and section 42-3201,
2 subsection A.

3 F. A department employee, in connection with the official duties
4 relating to any audit, collection activity or civil or criminal
5 investigation, may disclose return information to the extent that disclosure
6 is necessary to obtain information which is not otherwise reasonably
7 available. These official duties include the correct determination of and
8 liability for tax, the amount to be collected or the enforcement of other
9 state tax revenue laws.

10 G. If an organization is exempt from this state's income tax as
11 provided in section 43-1201 for any taxable year, the name and address of the
12 organization and the application filed by the organization upon which the
13 department made its determination for exemption together with any papers
14 submitted in support of the application and any letter or document issued by
15 the department concerning the application are open to public inspection.

16 H. Confidential information relating to transaction privilege tax, use
17 tax, severance tax, jet fuel excise and use tax and rental occupancy tax may
18 be disclosed to any county, city or town tax official if the information
19 relates to a taxpayer who is or may be taxable by the county, city or
20 town. Any taxpayer information released by the department to the county,
21 city or town:

22 1. May only be used for internal purposes.

23 2. May not be disclosed to the public in any manner that does not
24 comply with confidentiality standards established by the department. The
25 county, city or town shall agree in writing with the department that any
26 release of confidential information that violates the confidentiality
27 standards adopted by the department will result in the immediate suspension
28 of any rights of the county, city or town to receive taxpayer information
29 under this subsection.

30 I. The department may disclose statistical information gathered from
31 confidential information if it does not disclose confidential information
32 attributable to any one taxpayer. In order to comply with the requirements
33 of section 42-5029, subsection A, paragraph 3, the department may disclose to
34 the state treasurer statistical information gathered from confidential
35 information, even if it discloses confidential information attributable to a
36 taxpayer.

37 J. The department may disclose the aggregate amounts of any tax
38 credit, tax deduction or tax exemption enacted after January 1, 1994.
39 Information subject to disclosure under this subsection shall not be
40 disclosed if a taxpayer demonstrates to the department that such information
41 would give an unfair advantage to competitors.

42 K. Except as provided in section 42-2002, subsection C, confidential
43 information, described in section 42-2001, paragraph 2, subdivision (a), item
44 (iii), may be disclosed to law enforcement agencies for law enforcement
45 purposes.

1 L. The department may provide transaction privilege tax license
2 information to property tax officials in a county for the purpose of
3 identification and verification of the tax status of commercial property.

4 M. The department may provide transaction privilege tax, luxury tax,
5 use tax, property tax and severance tax information to the ombudsman-citizens
6 aide pursuant to title 41, chapter 8, article 5.

7 N. Except as provided in section 42-2002, subsection D, a court may
8 order the department to disclose confidential information pertaining to a
9 party to an action. An order shall be made only upon a showing of good cause
10 and that the party seeking the information has made demand upon the taxpayer
11 for the information.

12 O. This section does not prohibit the disclosure by the department of
13 any information or documents submitted to the department by a bingo
14 licensee. Before disclosing the information the department shall obtain the
15 name and address of the person requesting the information.

16 P. If the department is required or permitted to disclose confidential
17 information, it may charge the person or agency requesting the information
18 for the reasonable cost of its services.

19 Q. Except as provided in section 42-2002, subsection D, the department
20 of revenue shall release confidential information as requested by the
21 department of economic security pursuant to section 42-1122 or 46-291.
22 Information disclosed under this subsection is limited to the same type of
23 information that the United States internal revenue service is authorized to
24 disclose under section 6103(1)(6) of the internal revenue code.

25 R. Except as provided in section 42-2002, subsection D, the department
26 of revenue shall release confidential information as requested by the courts
27 and clerks of the court pursuant to section 42-1122.

28 S. To comply with the requirements of section 42-5031, the department
29 may disclose to the state treasurer, to the county stadium district board of
30 directors and to any city or town tax official that is part of the county
31 stadium district confidential information attributable to a taxpayer's
32 business activity conducted in the county stadium district.

33 T. The department shall release confidential information as requested
34 by the attorney general for purposes of determining compliance with and
35 enforcing section 44-7101, the master settlement agreement referred to
36 therein and subsequent agreements to which the state is a party that amend or
37 implement the master settlement agreement. Information disclosed under this
38 subsection is limited to luxury tax information relating to tobacco
39 manufacturers, distributors, wholesalers and retailers and information
40 collected by the department pursuant to section 44-7101(2)(j).

41 U. For proceedings before the department, the office of administrative
42 hearings, the board of tax appeals or any state or federal court involving
43 penalties that were assessed against a return preparer or electronic return
44 preparer pursuant to section 42-1103.02 or 42-1125.01, confidential
45 information may be disclosed only before the judge or administrative law

1 judge adjudicating the proceeding, the parties to the proceeding and the
2 parties' representatives in the proceeding prior to its introduction into
3 evidence in the proceeding. The confidential information may be introduced
4 as evidence in the proceeding only if the taxpayer's name, the names of any
5 dependents listed on the return, all social security numbers, the taxpayer's
6 address, the taxpayer's signature and any attachments containing any of the
7 foregoing information are redacted and if either:

8 1. The treatment of an item reflected on such return is or may be
9 related to the resolution of an issue in the proceeding.

10 2. Such return or return information relates or may relate to a
11 transactional relationship between a person who is a party to the proceeding
12 and the taxpayer which directly affects the resolution of an issue in the
13 proceeding.

14 V. The department may disclose to the attorney general confidential
15 information received under section 44-7111 and requested by the attorney
16 general for purposes of determining compliance with and enforcing section
17 44-7111. The department and attorney general shall share with each other the
18 information received under section 44-7111, and may share the information
19 with other federal, state or local agencies only for the purposes of
20 enforcement of section 44-7101, section 44-7111 or corresponding laws of
21 other states.

22 Sec. 3. Conditional repeal; notice

23 A. Sections 41-2170, 41-2170.01, 41-2170.02, 41-2170.03, 41-2170.04,
24 41-2170.05, 41-2170.06 and 41-2170.07, Arizona Revised Statutes, as added by
25 this act, are repealed if a federal reduced cigarette ignition propensity
26 standard is enacted into law.

27 B. The state fire marshal shall notify in writing the director of the
28 Arizona legislative council of the effective date of this federal
29 legislation.

30 Sec. 4. Requirements for enactment; two-thirds vote

31 Pursuant to article IX, section 22, Constitution of Arizona, this act
32 is effective only on the affirmative vote of at least two-thirds of the
33 members of each house of the legislature and is effective immediately on the
34 signature of the governor or, if the governor vetoes this act, on the
35 subsequent affirmative vote of at least three-fourths of the members of each
36 house of the legislature.

APPROVED BY THE GOVERNOR MAY 6, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 6, 2008.